

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FLATHEAD MUNICIPAL AIRPORT)	
AUTHORITY, and)	
)	
FRIEDMAN MEMORIAL)	No. 13-71133
AIRPORT AUTHORITY)	(consolidated w/ Nos.
)	13-71172, 13-71177,
Petitioners,)	13-71178, 13-71179,
)	& 13-71181)
v.)	
)	
FEDERAL AVIATION)	
ADMINISTRATION and)	
MICHAEL P. HUERTA, Administrator,)	
Federal Aviation Administration,)	
)	
Respondents.)	
)	

**MOTION FOR LEAVE TO INTERVENE
BY COUNTY OF VENTURA**

Counsel of record for the above-captioned petitioners and respondents have informed the undersigned counsel that they do not oppose this motion. Pursuant to rule 15(d) of the Federal Rules of Appellate Procedure, the County of Ventura, through its Department of Airports (“Ventura”), hereby moves for leave to intervene as petitioner in the above-captioned petition for review of the decision of respondent Federal Aviation Administration (“FAA”) to close federal contract air traffic control towers currently funded through the Federal Contract Tower

Program.

BACKGROUND

Pursuant to section 46110 of title 49 of the United States Code and rule 15(a) of the Federal Rules of Appellate Procedure, on March 29, 2013, in this court, petitioners Flathead Municipal Airport Authority and Friedman Memorial Airport Authority (“Petitioners”) filed the above-captioned petition for review (“Petition”) of the FAA’s decision to close 149 federal contract air traffic control tower operations (“FAA’s decision”), including tower operations at airports owned and operated by Petitioners. The Petition has been consolidated with several other petitions for review of the FAA’s decision filed in and transferred from the United States Court of Appeal for the District of Columbia (see case number 13-71172). Numerous other petitions and motions to intervene seeking review of the FAA’s decision have also been filed.

Ventura owns and operates the Oxnard Airport. Oxnard Airport is served by a federal contract air traffic control tower (“the Oxnard tower”). (Declaration of Todd L. McNamee (“McNamee Decl.”), ¶ 2, attached hereto.) The FAA sent Ventura substantially the same March 5, 2013, letter regarding impending closure of federal air traffic control towers as it sent Petitioners. (McNamee Decl., ¶ 2; Exhibit A attached to McNamee Decl. See Attachment A to Petition, pp. 2-5.) In

response, Ventura sent FAA a letter objecting to closure of the Oxnard tower. (McNamee Decl., ¶ 2; Exhibit B attached to McNamee Decl.) The Oxnard tower is one of the 149 towers to be closed pursuant to the FAA's decision. (McNamee Decl., ¶ 2. See Attachment A to Petition, p. 9.)

ARGUMENT

A person who wants to intervene in a petition for review of an agency order must file a motion for leave to intervene within 30 days after the petition for review is filed that contains "a concise statement of the interest of the moving party and the grounds for intervention." (Fed. Rules App. Proc., rule 15(d).) Appellate courts have turned to the standards for intervention under rule 24 of the Federal Rules of Civil Procedure in order to decide motions for leave to intervene under Federal Rules of Appellate Procedure, rule 15(d) . (*Sierra Club, Inc. v. E.P.A.* (7th Cir. 2004) 358 F.3d 516, 517-518.)

"An applicant seeking to intervene as of right under [Fed. R. Civ. P.] Rule 24 must demonstrate that four requirements are met: '(1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest.'" (*Citizens for Balanced Use v. Montana Wilderness Ass'n* (9th Cir. 2011) 647 F.3d 893, 897.)

Courts broadly interpret these requirements in favor of intervention. (*Ibid.*)

A district court may allow anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact if intervention will not unduly delay or prejudice the original parties' rights. (Fed. Rules Civ. Proc., rule 24(b).)

Ventura is entitled to intervene. This motion is filed within 30 days after the Petition was filed. The Petition seeks review of the FAA's decision to close a group of 149 federal contract air traffic control towers, which includes the air traffic control tower operations at Ventura's Oxnard Airport. In this respect Ventura is in the same position as Petitioners and petitioners in the related and consolidated cases. However, the particular hazards and effects of closing the Oxnard tower are unique, because the surrounding area and air traffic are unique. For example, the Oxnard Airport is approximately five miles from both another civilian airport and a naval base where military flights take place. Oxnard Airport is adjacent to a major metropolitan area, Los Angeles, which includes several airports and heavy air traffic. (McNamee Decl., ¶ 3.) Thus, existing parties may not adequately represent Ventura's interest. In addition, Ventura meets the standard for permissive intervention. The FAA's decision did not distinguish

between the Oxnard tower and the other 148 towers slated for closure. Ventura's intervention will not prejudice any other party in the consolidated or related cases.

CONCLUSION

For the foregoing reasons Ventura respectfully requests that the court grant its motion to intervene in support of Petitioners with rights as a party thereto pursuant to rule 15(d) of the Federal Rules of Appellate Procedure.

LEROY SMITH
County Counsel, County of Ventura

Dated: April 29, 2013 By _____ /s/ _____

ERIC WALTS
Assistant County Counsel

Attorneys for County of Ventura,
Department of Airports

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DECLARATION OF TODD L. McNAMEE

I, Todd L. McNamee, declare as follows:

1. I am the Director of the Department of Airports of the County of Ventura (“Ventura”). The matters set forth in this declaration are within my personal knowledge and, if called upon to testify as to these matters, I could and would so competently testify.

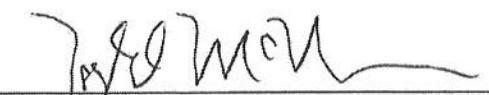
2. Ventura owns and operates the Oxnard Airport. The Oxnard Airport is served by a federal contract air traffic control tower operation. The Federal Aviation Administration (“FAA”) sent Ventura a letter dated March 5, 2013, proposing to close federal contract air traffic control tower services operations, a true and correct copy of which is attached hereto as Exhibit A. That letter is substantially identical to a March 5, 2013, letter that FAA sent petitioners Flathead Municipal Airport Authority and Friedman Memorial Airport Authority (“Petitioners”). In response, I sent FAA a letter dated March 12, 2013, objecting to closure of contract air traffic control tower operations at the Oxnard Airport, a true and correct copy of which is attached hereto as Exhibit B. I received a copy of the same March 22, 2013, e-mail attached to Petitioners’ petition for review wherein FAA announced its decision to close federal contract air traffic control tower operations at 149 airports, including Petitioners’ airports and the Oxnard Airport.

3. As discussed in my March 12 letter to FAA attached hereto, the particular hazards and effects of closing tower operations at the Oxnard Airport are unique because the surrounding area and air traffic are unique. For example, the Oxnard Airport is approximately five miles from both another civilian airport and a naval base where military flights take place. Oxnard Airport is adjacent to a major metropolitan area, Los

Angeles, which includes several airports and heavy air traffic.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Dated: 4/26/13



Todd L. McNamee

EXHIBIT A



U.S. Department
of Transportation

Federal Aviation
Administration

March 5, 2013

800 Independence Ave., SW.
Washington, DC 20591

Received

MAR 11 2013

COUNTY OF VENTURA
555 AIRPORT WAY
CAMARILLO, CA 93010

Dept. of Airports

Dear Airport Sponsor:

Thank you for your participation in the FAA Contract Tower (FCT) Program. We regret to inform you that in order to implement the budget sequestration that went into effect on March 1, 2013, the FAA must make some critical decisions about funding for the FCT Program.

The FAA's guiding principles in implementing the budget sequestration are to maintain our high safety standards, and to minimize the impact to the greatest numbers of passengers. Therefore, the FAA's initial plans unfortunately affect smaller airports with fewer operations and lower passenger counts more significantly than locations serving larger blocks of passengers. We have identified and, on February 22, 2013, published a list of towers that had fewer than 150,000 total operations AND fewer than 10,000 commercial operations. We anticipate that we will cease to fund on-site air traffic control services at the vast majority of these facilities.

Your airport falls below the above stated criteria based on Fiscal Year 2012 traffic count, and therefore the tower is on the list of those for which we may cease providing funding. Between now and March 13, 2013, the FAA is reviewing its list of locations where it plans to discontinue air traffic control services to identify any locations where the national interest would be adversely affected by tower closure. Negative impact on the national interest is the only criterion the FAA will use for deciding to continue services to an airport that falls below the activity threshold. The FAA is unable to consider local community impact that does not affect the national interest.

The FAA will consider information concerning how closure of particular tower operations will adversely affect the national interest in submissions it receives on or before March 13, 2013. Submissions may be sent to ATO-Terminal Services at ClosureComments@faa.gov or fax to ATO-Terminal Services at (202) 493-4565. The FAA plans to finalize the list of facility closures by March 18, 2013.

While the timing of this action is driven by sequestration, continuing annual budgetary pressure may necessitate future reductions such as these. For communities where the continuation of air traffic control services is important to their airport, but the impact of closure is local and does not affect the national interest, the non-federal contract tower program continues to be an available option to maintain air traffic control services at the airport's expense. Additional information regarding the non-federal contract tower program is contained in Advisory Circular Number AC 90-93A (Operating Procedures for Airport Traffic Control

Towers (ATCT) that are not operated by, or under contract with, the United States (Non-Federal)).

If you have additional questions or need further information, please contact your FAA point of contact in the Service Center, or Tony Mello, Director of Terminal Operations at FAA Headquarters, at (202) 385-8533.

Sincerely,



Michael P. Huerta
Administrator



J. David Grizzle
Chief Operating Officer
Air Traffic Organization

EXHIBIT B

county of ventura
DEPARTMENT OF AIRPORTS
www.ventura.org/airports



555 Airport Way ◆ Camarillo, CA 93010 ◆ (805) 388-4274 ◆ Fax: (805) 388-4366

March 12, 2013

J. David Grizzle
Chief Operating Officer
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

**Re: Request to Exempt Oxnard and Camarillo Airport Control Towers
from Funding Cessation Due to Sequestration based on Impact on the
National Interest**

Dear Mr. Grizzle:

Thank you for the opportunity to comment on the proposed funding cessation that will result in the closing of the Federal Contract Control Tower at Oxnard Airport (OXR) and the FAA staffed Control Tower at Camarillo Airport (CMA). Camarillo Airport is categorized as a National Asset in the FAA's *General Aviation Airports, A National Asset* study conducted last year. I write to you in hopes of keeping these two towers, as well as others, open and that you find other means within the FAA to meet the reduction in federal spending due to sequestration.

Oxnard airport is the only Part 139 airport in Ventura County which is a County of more than 800,000 citizens. Oxnard and Camarillo airports share Class D airspace with Naval Base Ventura County/Pt. Mugu (NTD) and the three airports form a triangle with legs of approximately 5 miles between them. Closing these towers will cause a safety issue due to the lack of coordination between aircraft departing and arriving OXR, CMA, and NTD in close proximity to one another. There were 187,290 recorded annual operations at Oxnard and Camarillo airports as well as tens of thousands of military operations at NTD. The three airports all have instrument procedures that "overlap" the other airports airspace and flight paths. **The safety implications and the reduced coordination with Department of Defense operations demonstrate a negative impact on the National Interest.**

Further, if you analyze the control towers slated for closure in the Los Angeles basin area you will quickly realize that there are as many as 884,593 annual operations conducted at these twelve airports, all of which will no longer benefit from the coordination that is conducted by the control towers (see attached). Of those, 474,522 annual operations are at airports with Contract Towers. These airports lie directly

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adjacent and near Los Angeles World Airports (LAX), Bob Hope/Burbank Airport (BUR), Long Beach Airport (LGB), Ontario Airport (ONT), and John Wayne Airport (SNA). THESE FIVE PART 139 AIRPORTS HANDLE APPROXIMATELY 85 MILLION ANNUAL PASSENGERS. This is not the way to minimize the impact on the maximum number of traveling passengers. **The safety implications and the reduced coordination that will result in severe inefficiencies in the Los Angeles airspace are a negative impact on the National Interest.**

The airports mentioned above generate BILLIONS of dollars in positive economic impact every year. All of these airports provide access to the National Airspace System (NAS) and contribute to interstate commerce. **Creating severe inefficiencies by closing the towers will have a negative impact on that economic benefit, causing the slowing of the national economy and is a negative impact on the National Interest.**

These control towers coordinate movements on the ground at each of the airports. The FAA Runway Safety Action Team (RSAT) relies on the towers to coordinate the safe movement of aircraft and separation from vehicles and pedestrians in movement areas. Closing the control towers will result in no control over these ground movements and the likelihood of vehicle pedestrian deviations, taxiway incursions, and runway incursions will increase jeopardizing the safety of pilots and airport tenants. Given the high importance placed on implementing Safety Management Systems (SMS) by the FAA and the National Transportation Safety Board, a Safety Risk Assessment should be conducted at each individual facility prior to any final decisions on closure. The FAA's own internal SMS protocols, which cuts across every line of business in the agency, should be followed. **Again, the safety implications are a negative impact on the National Interest.**

FAA Advisory Circular 150/5370-2F provides for construction safety phasing plans during construction projects at airports. Closing the towers will result in a lack of coordination between airport operations and construction activities and will cause delays in construction projects at airports. **Delaying construction projects will reduce the number of jobs provided by the construction and have a negative impact on the unemployment rate and national economy causing a negative impact on the National Interest. Further, it will impact safety between airport operations and construction on airports.**

Sequestration is designed to result in an across the board cut on federal programs, yet the Federal Contract Tower Program is being proposed to be cut by 75%. This is an unfair and discriminatory action on a program that saves the FAA millions of dollars a year. In this crucial time for general aviation where there is an aging pilot population, high fuel prices, environmental pressures regarding 100LL fuel, it seems to me that the FAA should be doing all it can to support keeping the control towers open which will benefit the safety of all aviation. Student pilots are required to fly into an airport with an operating control tower as part of their training. Should we now send the student pilots to LAX, BUR, LGB, ONT, and SNA to conduct their training? **Closing the towers will**

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make the aviation industry less safe, inefficient, and therefore less inviting to new pilots and cripple the future of the industry creating a negative impact on the National Interest.

Thank you for your consideration of these comments. As you can see, the County of Ventura feels strongly that closing either or both of the control towers in our County impacts the National Interest. I may be reached at 805-388-4200 with any questions.

Sincerely,



TODD L. McNAMEE, AAE
Director of Airports

Attachments:

ATADs Report for LA Basin Contract Tower Operations

ATADs Report for LA Basin FAA and Contract Towers Operations

Diagram showing location of proposed 12 tower closures (red) and five Part 139 airports (green)

3/7/13

ATADS Report

ATADS : Airport Operations : Standard Report

From 01/2012 To 12/2012 | Facility=FUL, HHR, OXR, PMD, RAL, VCV, WHP, WJF

Calendar Year	State	Facility	Service Area	Region	Class	IFR Itinerant					Itinerant					Local			Total Operations
						Air Carrier	Air Taxi	General Aviation	Military	Total	Air Carrier	Air Taxi	General Aviation	Military	Total	Civil	Military	Total	
2012	CA	FUL	WT	AWP	Federal Contract Tower	3	7	3,576	3	3,589	3	187	40,841	10	41,021	17,287	0	17,287	58,308
2012	CA	HHR	WT	AWP	Federal Contract Tower	0	560	2,079	18	3,557	0	1,580	39,942	386	41,908	31,098	38	31,136	73,044
2012	CA	OXR	WT	AWP	Federal Contract Tower	0	1,808	7,240	107	9,165	0	4,079	24,233	169	28,481	25,940	190	26,130	54,611
2012	CA	PMD	WT	AWP	Federal Contract Tower	128	170	6,210	6,196	12,704	130	175	9,080	6,645	16,030	1,078	11,074	12,152	28,182
2012	CA	RAL	WT	AWP	Federal Contract Tower	0	77	7,006	49	7,132	0	175	36,530	118	36,823	35,155	47	35,202	72,025
2012	CA	VCV	WT	AWP	Federal Contract Tower	1,353	112	3,509	1,358	6,332	1,357	1,413	14,061	3,925	20,756	16,107	26,416	42,523	63,279
2012	CA	WHP	WT	AWP	Federal Contract Tower	0	0	651	0	651	0	0	38,082	4	38,086	33,318	116	33,434	71,520
2012	CA	WJF	WT	AWP	Federal Contract Tower	1	335	1,534	290	2,160	1	1,522	27,811	1,034	30,368	22,679	506	23,185	53,553
Sub-Total for Unknown						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522
Sub-Total for AWP						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522
Sub-Total for WT						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522
Sub-Total for CA						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522
Sub-Total for 2012						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522
Total:						1,485	3,069	32,705	8,021	45,280	1,491	9,111	230,580	12,291	253,473	182,662	38,387	221,049	474,522

Report created on Thu Mar 7 16:59:20 EST 2013
Sources: Air Traffic Activity System (ATAOS)

3/7/13

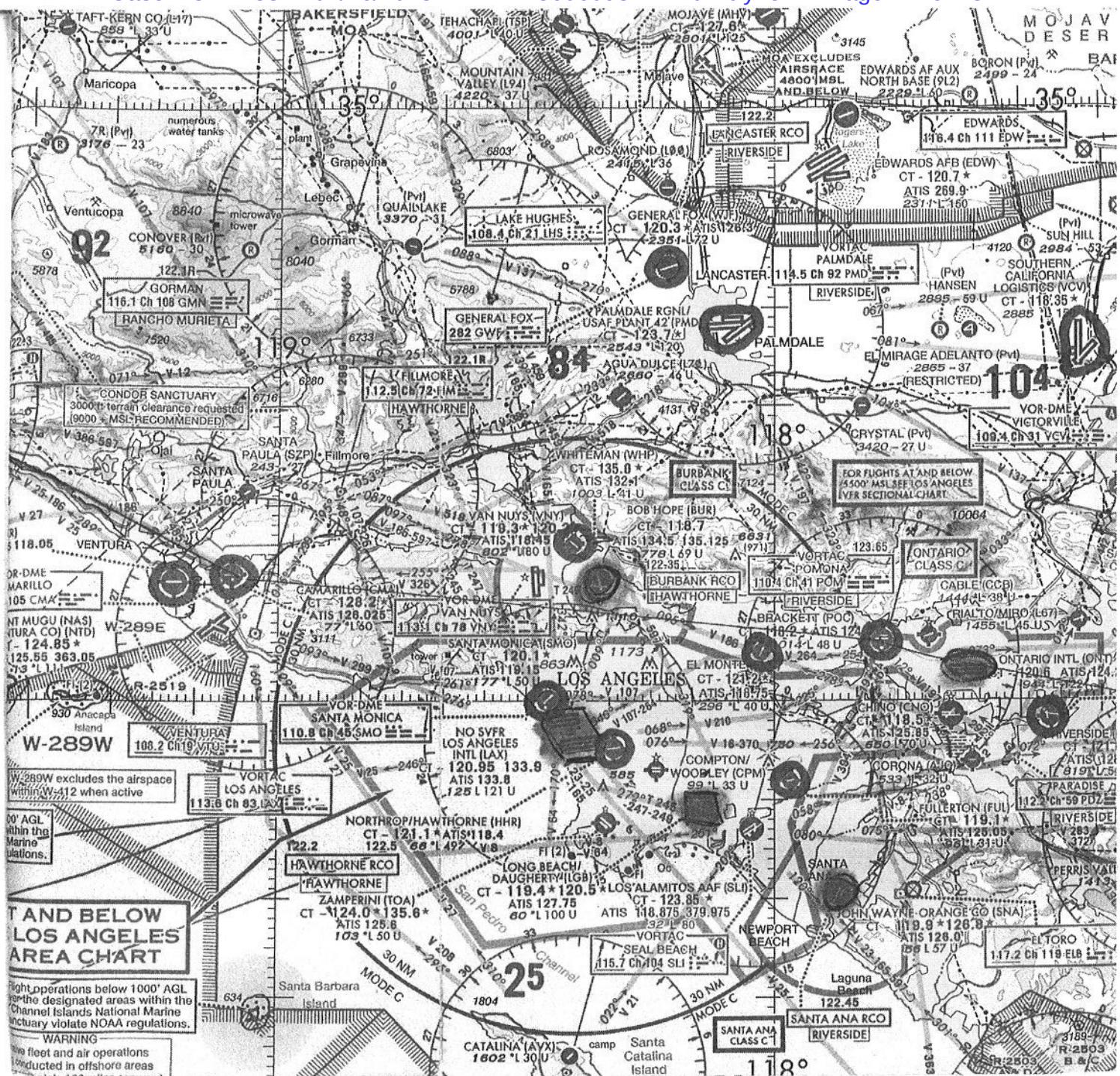
ATADS Report

ATADS : Airport Operations : Standard Report

From 01/2012 To 12/2012 | Facility=FUL, HHR, OXR, PMD, RAL, VCV, WHP, CMA, EMT, PCC, SMO, WJF

Calendar Year	State	Facility	Service Area	Region	Class	IFR Itinerant				Itinerant				Local				Total Operations	
						Air Carrier	Air Taxi	General Aviation	Military	Total	Air Carrier	Air Taxi	General Aviation	Military	Total	Civil	Military	Total	
2012	CA	CMA	WT	AWP	Towers with Radar	0	2,073	12,768	52	14,893	0	3,288	65,965	114	69,385	63,205	109	63,314	132,679
2012	CA	EMT	WT	AWP	Towers with Radar	0	474	3,188	16	3,886	23	833	36,700	85	37,841	46,440	56	46,496	84,137
Sub-Total for Unknown						8	2,547	15,956	68	18,579	23	4,119	102,685	199	107,006	109,845	165	109,810	216,816
2012	CA	FUL	WT	AWP	Federal Contract Tower	3	7	3,576	3	3,589	3	167	40,841	10	41,021	17,287	0	17,287	58,308
2012	CA	HHR	WT	AWP	Federal Contract Tower	0	580	2,979	18	3,557	0	1,580	39,942	386	41,908	31,098	38	31,136	73,044
2012	CA	OXR	WT	AWP	Federal Contract Tower	0	1,808	7,240	107	9,155	0	4,079	24,233	169	28,481	25,940	190	26,130	54,811
2012	CA	PMD	WT	AWP	Federal Contract Tower	128	170	6,210	6,196	12,704	130	175	9,080	6,645	18,030	1,078	11,074	12,152	28,182
Sub-Total for Unknown						131	2,545	20,005	6,324	29,005	133	6,001	114,096	7,210	127,440	75,403	11,302	88,705	214,145
2012	CA	POC	WT	AWP	Towers with Radar	13	64	5,667	88	5,832	30	152	38,357	180	38,719	51,050	208	51,258	89,977
2012	CA	RAL	WT	AWP	Federal Contract Tower	0	77	7,006	49	7,132	0	175	38,530	118	38,823	35,155	47	35,202	72,025
2012	CA	SMO	WT	AWP	Towers with Radar	30	6,840	17,760	56	24,476	45	6,687	62,218	87	69,037	34,240	1	31,241	103,278
2012	CA	VCV	WT	AWP	Federal Contract Tower	1,353	112	3,509	1,358	6,332	1,357	1,113	14,061	3,926	20,756	16,107	26,416	42,523	63,279
2012	CA	WHP	WT	AWP	Federal Contract Tower	0	0	851	0	851	0	0	38,082	4	39,086	33,318	116	33,431	71,520
2012	CA	WJF	WT	AWP	Federal Contract Tower	1	335	1,634	290	2,160	1	1,522	27,811	1,034	30,368	22,679	506	23,185	53,553
Sub-Total for Unknown						1,354	447	5,694	1,848	9,143	1,358	2,935	79,954	4,983	89,210	72,104	27,038	99,142	188,352
Sub-Total for AWP						1,536	12,320	72,078	8,233	94,167	1,589	20,069	433,820	12,757	468,235	377,597	38,761	416,358	884,593
Sub-Total for WT						1,536	12,320	72,078	8,233	94,167	1,589	20,069	433,820	12,757	468,235	377,597	38,761	416,358	884,593
Sub-Total for CA						1,536	12,320	72,078	8,233	94,167	1,589	20,069	433,820	12,757	468,235	377,597	38,761	416,358	884,593
Sub-Total for 2012						1,536	12,320	72,078	8,233	94,167	1,589	20,069	433,820	12,757	468,235	377,597	38,761	416,358	884,593
Total:						1,536	12,320	72,078	8,233	94,167	1,589	20,069	433,820	12,757	468,235	377,597	38,761	416,358	884,593

Report created on Thu Mar 7 15:55:13 EST 2013
 Sources: Av Traffic Activity System(ATADS)



9th Circuit Case Number(s)

13-71133 (consolidated w/ 13-71172, 13-71177, 13-71178,
13-71179, 13-71181)

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Apr 26, 2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

s/ Eric Walts

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)